IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 157 OF 2005

IN

SUM. SUIT NO. 3602 OF 2004

OSRAM India Pvt.Ltd., ... Plaintiff

vs.

Mrs. Dwarkadas Chandak

& Anr. ... Defendants.

Mr. Chirag Balsara a/w Mikhil Mehta

i/by K.M.C. Legal Venture

for the plaintiff.

Ms. Neeta Parikh a/w A.V. Dhond for defendants.

CORAM : S.U. KAMDAR, J.

DATED : 25TH OCTOBER, 2005.

P.C.

. The present suit is filed in respect of goods sold and delivered under three invoices. The claim in the present suit is for a sum of Rs. 1,82,438.29. Apart from other defences, two defences are raised that the cheque which has been relied upon of 9.9.2002 is post-dated cheque. The signatory to the said cheque has in fact died in

March, 2002 itself and, therefore, the said cheque is not valid. If the original defendant i.e. Dwarkadas died on 31.3.2002 the cheque of 9.9.2002 cannot be treated as an acknowledgement of liability as on 9.9.2002. If that is true, prima facie the claim is barred because the invoices are of January 2001. Suit is lodged on 10.12.2004. Thus, the claim is prima facie barred by law of limitation. In so far as the return of the goods is concerned also the original defendant has produced consignee receipt indicating return of the goods at the relevant time in 2001 itself. In that view of the matter, in my opinion triable issues arise. Summons for judgment is dismissed. Unconditional leave to the defendant to defend the suit.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.